

MUSLIM FAMILY LAW

ALL BRANDS AND ALL MODELS ARE INCOMPATIBLE WITH THE SHARIAH

QUESTION: In his brochure, 'Muslim Family Law', it appears that brother Sikander Mohammed has drawn support from the comments of Mufti Taqi Usmaani whose views he has reproduced. From Mufti Taqi's comments it appears that the senior Ulama of India were in favour of some form of MPL (Muslim Personal Law) whereas many Ulama in South Africa, including the Mujlisul Ulama, are totally anti-MPL. You have dismissed Sikander's Muslim Family Law model as unworkable. Is there any other model which could be made compliant with the Shariah and workable?

ANSWER

For Muslims there can be only one model, and that is the Shariah. But achievement of the Shariah in a non-Muslim state or even in a secular Muslim country such as the myriad of Muslim plastic states existing today, is impossible. Mr. Sikander's model has no Shar'i viability. The Shariah cannot be fettered to any non-Muslim or secular system, then be expected to exercise its Law as commanded in the Qur'aan and Sunnah.

There is no support in Mufti Taqi's comments for Mr. Sikander's 'Muslim Family Law' model. Mufti Taqi Saheb painted his India MPL scenario having in mind the conditions prevailing under the British Raj in India 70 years ago. The attempt to impose on the South African Muslim community the Indian model of 70 years ago, or to attempt that we should submit to the methodology which the Ulama had adopted 70 years ago in the peculiar set-up under the British Raj is preposterous to say the least. The reaction of the Ulama to the situation created by the defeat of the Muslims in India many decades ago, is not a reaction which we have to adopt nor can that reaction be imposed on us by the fact that it was a methodology of senior Ulama. Taqleed of the Seniors is incumbent in the Mansoos Ahkaam, not in mundane methodology regarding issues of the nature we are debating.

Furthermore, Hadhrat Mufti Taqi's comments and advice, with the Indian MPL model silhouetted in the background, is flawed in many areas. We have adequately responded to every comment of Hadhrat Mufti Taqi Sahib, and our comments were published in our book, MPL – OUR RESPONSE TO HADHRAT MUFTI TAQI UTHMAANI. Anyone interested may write for this book.

Mr. Sikander's reliance on Mufti Taqi's views is devoid of substance. In fact, we believe that Mufti Taqi will not support Mr. Sikander's 10 building-Muslim Family Law model.

There are two types of Muslims. (1) Those who are genuinely conscious of the Shariah and do endeavour to regulate their affairs – not only marital issues – according to the Shariah. (2) Those who lack any understanding of the Shariah, and who are in search of a law which the Qur'aan labels: Hukmul Jaahiliyyah (the law of ignorance). In other words secular or non-Muslim law.

There is no problem - absolutely no problem for the first type of Muslims. They are not debarred by the state from submitting to the Shariah, and they are not in need of secular courts to ram the Shariah down their throats because they voluntarily accept Allah's Law. There is therefore no need to enlist the aid of the secular authorities to administer the Shariah to Muslims. These Muslims do not need any MPL model whatsoever.

The other group of 'Muslims' who are not satisfied with the patriarchal system of the Divine Shariah, do require the secular law for overriding the Shariah. Such 'Muslims' are not even our concern. They have their own path of deviation leading to Jahannum. There are ample secular laws in place to cater for their haraam needs. Thus, from both perspectives there is no need for any model of family laws presented with Islamic hues whilst in reality it is in conflict with the Shariah such as the Kufr MMB (Muslim Marriages Bill) for which the modernists are clamouring.

The deceptive factor in all models of 'Muslim' family law, regardless of who the authors of these models are, is the creature which they have dubbed 'Recognition'. The slogan of all deviant groups clamouring for an MPL model is invariably 'recognition of Muslim marriages'. A lot of hot air has been blown under this hollow slogan. To gain 'recognition' for Muslim marriages from the secular non-Muslim, even persons who are known to be Ulama' have reconciled themselves with kufr. For the sake of gaining non-Muslim recognition of our marriages, they are prepared to barter away the Shariah, and to deceptively term their respective models 'Muslim'.

The entire world recognizes Muslim marriages regardless of any secular law with which our marriages do not conform. Even during the apartheid regime there was no genuine stigma attached to an Islamic marriage irrespective of the legal label which the secular law attached to the marriage. And, even if the secular law does not recognize Muslim marriages, what do we care? It does not ruffle even a feather. The recognition of the Nikah is recorded in the Heavens – in Looh Mahfooz. We have no need for secular recognition.

All models of family law fabricated for Muslims are pure drivel having no basis in the Deen. The perceived 'hardships' in the absence of secular recognition are the consequence of the Satanism in people who refuse to submit to the Shariah. The rulings of the Shariah are freely available from the Ulama. There are no fees to pay for the acquisition of Shar'i advice, admonition and guidance. The community does not have the burden of constructing buildings, providing vehicles, offices, libraries, office equipment and a host of other paraphernalia for the simple issue of regulating Muslim affairs – not only marital – in accordance with the Shariah. Hitherto, not a single person from any walk of life has provided a single cogent reason for the cacophony of MPL voices clamouring for 'recognition' of Muslim marriages.

Assuming that there is half a cogent reason to justify this stupid clamour, then too, none of the proffered models is acceptable for the simple reason that the Shariah cannot be fettered to secular law – the Shariah cannot be made subservient to secular law – the Shariah is above the Constitution, not the other way around. So when it is a total impossibility to achieve a fully Shariah compliant model, then it devolves on Muslims to practise the Shariah to the best of their ability and endeavour to legally circumvent the constraints of the secular laws. In South Africa, there is no law preventing Muslims from regulating their marriages, all marital problems and issues of Inheritance 100% in compliance with the Shariah.

Like other MPL models, Mr.Sikander's model is Islamically unacceptable. Mufti Taqi's comments are antique and inapplicable in our era. In terms of the Shariah, Zakaat and Lillah funds may not be diverted to aid MPL models. The Qur'aan Majeed explicitly and emphatically decrees that Zakaat is the Haqq of the Fuqara and Masaakeen. Zakaat diverted for the purpose of producing MPL models will not be discharged.

We advise Mr.Sikander to channel his time and energy in some other beneficial project acceptable to the Shariah, for example, operating soup kitchens for the hungry and the destitute.

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